IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CIVIL REVISION APPLICATION NO.41 OF 1999

Smt. Rajkishore Kiran Shukla. ...Petitioner.

Versus

Ramesh Chandrika Prasad Pathak. ...Respondent.

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Mr. G. G. Desai With Ms. Geeta Shastri for the Petitioner.
Mr. S. G. Karandikar for the Respondent.

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CORAM : DR. D.Y. CHANDRACHUD, J.

November 18, 2005.

P.C.:

This Civil Revision Application takes exception to a judgment and order of the Civil Judge, Junior Division, Palghar in a suit under Section 6 of the Specific Relief Act, 1963.

2. According to the Petitioner, since 1970, she was in possession of a shop admeasuring 15' x 8' on a piece of non-agricultural land bearing Pardi No.30 situate at Boisar, Palghar, as a tenant on a monthly rent of Rs.125/-. There is no dispute about the

fact that the suit premises were taken initially by the father of the Petitioner for the family. According to the Petitioner, the rent of the premises was regularly paid from time to time to the mother of the Respondent and after her life time to the wife of the Respondent. The business of a Provision Store by the name of Mayur Kirana General Stores was carried on therein. The case of the Petitioner is that on 24th May 1990 when the premises were being opened by the Petitioner's sister, the Respondent obstructed and interfered with the possession of the Petitioner's family over the premises, which led to the filing of a complaint at the Boisar Police Station. Regular Civil Suit No.87 of 1990 was filed against the Respondent for a declaration of tenancy and for an injunction restraining the Respondent from disturbing the possession of the Petitioner and her family. In that suit, on 31st July 1990, the Civil Judge, Junior Division, Palghar granted an ad-interim injunction. It was subsequently confirmed on 15th November 1990. On 25th January 1991, the Respondent filed Regular Civil Suit No.11 of 1991 under Section 6 of the Specif Relief Act, 1963 on the allegation that on 29th September 1990, the Petitioner took forcible possession of the premises from the

Respondent. The Petitioner filed her Written Statement and issues were framed in the suit. Between 14th February 1995 and 21st June 1996, the evidence of the Respondent and his two witnesses was recorded. On 22nd January 1998, the evidence of Constituted Attorney of the Petitioner was recorded and the matter was thereafter adjourned for cross-examination. From the Roznama of the proceedings which is annexed to the Paper Book it emerges that the Petitioner was absent on 18th March 1998, and on 15th April 1998. However, an application for adjournment was filed. It may be noted that the case of the Petitioner was that her witness i.e. Constituted Attorney, Shila Tiwari was unwell as a result of which an adjournment was necessitated. On 15th April 1998, an adjournment was granted as a matter of last chance. On 22nd April 1998, an application for adjournment came to be rejected and on 2nd May 1998, an order came to be passed that the suit shall proceed ex-parte.

3. The suit was thereafter, listed for hearing on diverse dates between June and October 1998. The suit could not proceed further since the Learned Trial Judge was busy in other judicial work on 3rd

September 1998, 24th September 1998 and 7th October 1998. On 12th November 1998, the Advocate appearing on behalf of the Petitioner filed a “No instructions” purshis. On 4th December 1998, the suit was adjourned for judgment to 17th December 1998. In the meantime, on 11th December 1998, an application was filed by the Advocate appearing on behalf of the Petitioner for permission to adduce evidence and on this application, a direction was issued by the Court to the effect that the application should be placed on 17th December 1998. On 17th December 1998 the application for permitting the Petitioner to adduce evidence was dismissed. Judgment was also delivered on the very same day, by which the suit instituted by the Respondent came to be decreed.

4. This Civil Revision Application was admitted on 28th January 1999 and during the pendency of these proceedings, the judgment of the Trial Court was stayed. The Petitioner, admittedly continues to remain in possession of the shop.

5. Counsel appearing on behalf of the Petitioner submitted

that having regard to the circumstances of the present case, it would be manifestly in the interests of justice if the Petitioner is allowed to complete leading evidence and to defend the suit. It was submitted that the Constituted Attorney who was looking after the suit was ill and on 8th December 1998, an application was filed before the Trial Court together with a medical certificate explaining the reasons why the Constituted Attorney who was in the witness box was not in a position to appear before the Court. It was urged that an order of the payment of costs would have met the ends of justice and that the Petitioner is ready and willing to submit herself to a time bound schedule for the early disposal of the suit. However, it was submitted that there would be a grave miscarriage of justice if the Petitioner is dispossessed at the present stage in pursuance of the judgment and order of the Trial Court, in the absence of an opportunity of substantiating her defence to the suit under Section 6 of the Specific Relief Act, 1963. Finally, it was submitted that the Learned Trial Judge having rejected the application of the Petitioner for leading evidence, ought to have afforded the Petitioner an opportunity to challenge the order before the higher forum, but the Trial Court while

rejecting the application on 17th December 1998 pronounced the final judgment and order in the suit on very same day. On the other hand on behalf of the Respondent it was sought to be urged that since the Petitioner and the Constituted Attorney had remained absent, the Learned Trial Judge was constrained to proceed ex-parte. In the circumstances, it was submitted that this Court should not exercise its revisional jurisdiction in the facts and circumstances of the case.

6. Having considered submissions of the parties, I am of the view that the ends of justice would warrant that the Petitioner should be furnished an opportunity of leading evidence in the suit and that the impugned judgment of the Learned Trial Judge should be set aside and the matter remanded for determination. Undoubtedly, the Constituted Attorney of the Petitioner (who is also the Petitioner's sister), who was in the witness box was not present before the Trial Court on 18th March 1998, 15th April 1998, 22nd April 1998 and 2nd May 1998. Counsel appearing on behalf of the Respondent submitted that the application for being permitted to lead evidence was filed only on 11th December 1998 and that there was no reason or justification not

to do so from May 1998 till the suit was set down to proceed ex-parte on the aforesaid date. However, the Roznama would show that after 22nd May 1998, the suit could not be taken up because the Presiding Judicial Officer was not available or was busy with other judicial work. On 12th June 1998 the Presiding Officer was at the Judicial Officers' Training Institute and the matter was accordingly adjourned to 3rd September 1998. Again on 3rd September 1998, 24th September 1998 and 7th October 1998, the Presiding Officer was busy with other judicial matters and on 15th October 1998, the Judge was on leave. On 12th November 1998, the Petitioner's Advocate filed a “No instructions” purshi. On 4th December 1998, an application was filed before the declaration of the judgment for an opportunity to the Petitioner to lead evidence. Having regard to these circumstances the ends of justice would be met, if a conditional order is passed allowing the Petitioner an opportunity to substantiate her defence, subject to the payment of costs. The Petitioner shall pay costs to the Respondent quantified at Rs.10,000/-. Conditional on the Petitioner paying the aforesaid amount by way of costs, within a period of four weeks from today, the judgment and order of the Learned Trial Judge

dated 17th December 1998 shall stand quashed and set aside and RCS No.11 of 1991 shall stand restored to the file of the Joint Civil Judge, Junior Division, Palghar. The trial shall proceed from the stage of the proceedings on 22nd January 1998. Parties shall appear before the Learned Trial Judge for receiving directions on 19th December 2005. It is made clear that in the event that costs are not paid to the Respondent as directed hereinabove, the order of the Trial Court dated 17th December 1998 shall stand. Subject to the payment of the aforesaid costs, the Learned Trial Judge shall fix a time schedule to dispose of the suit and shall endeavour to dispose of the same within a period of six months thereafter.

7. The Civil Revision Application is disposed of in the aforesaid terms.

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